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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91181182
Party	Plaintiff Burt's Bees, Inc.
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Submission	Motion for Sanctions
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BURT'S BEES, INC.

Opposer,

v.

Opposition No. 91181182

Serial No. 78922447

Mark: Bee Healthy

KENNETH M. NOSKIN,

Applicant.

OPPOSER'S MOTION FOR SANCTIONS

Opposer Burt's Bee, Inc. ("Opposer"), pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 37 of the Federal Rules of Civil Procedure, hereby respectfully moves the Trademark Trial and Appeal Board (the "Board") for an order imposing sanctions against Applicant Kenneth M. Noskin ("Applicant" or "Noskin") for failing to participate in the discovery process, and failing to abide by the previous Order of the Board. In support of this Motion, Opposer shows the Board as follows:

1. Opposer commenced this proceeding on December 11, 2007, by filing a Notice of Opposition with the United States Patent and Trademark Office to oppose registration of the mark BEE HEALTHY that is the subject of application Serial No. 78/922,447, published in the Official Gazette of August 14, 2007.
2. On January 22, 2008, Applicant filed its Answer to Opposer's Opposition.
3. On June 10, 2008, Opposer served its First Set of Interrogatories and First Request for Production of Documents (collectively the "Discovery Requests") upon Applicant.
4. Applicant's deadline to respond to Opposer's Discovery Requests was July 14, 2008.

5. Applicant failed to serve any written responses, objections or documents in response to Opposer's Discovery Requests.

6. Applicant did not file a motion for protective order or a motion for an extension of time to respond to Opposer's Discovery Requests.

7. After attempting in good faith to resolve this discovery dispute without the Board's involvement, Opposer filed a Motion to Compel on August 8, 2008.

8. The Board entered an Order dated October 7, 2008 granting the Motion to Compel and ordering the Applicant to "serve full and complete responses, without objections" to Opposer's discovery requests.

9. As of the date of this Motion for Sanctions, Applicant has served no responses or responsive documents. In fact, Applicant has done nothing to comply with the Board's Order.

10. Under Rule 2.120(g)(1) of the Trademark Rules of Practice, if a party fails to comply with an Order of the Board compelling discovery responses, the Board may impose any of the sanctions contained in Rule 37(b)(2) of the Federal Rules of Civil Procedure, other than the award of expenses.

11. Rule 37(b)(2)(A)(vi) of the Federal Rules of Civil Procedure provides that an appropriate sanction for the failure to comply with an Order of the Board includes "rendering a default judgment against the disobedient party."

12. The Applicant's failure to comply with the previous Order of the Board and failure to respond at all to legitimate discovery requests warrants the imposition of a harsh sanction. By refusing to cooperate in discovery, and refusing to abide by the applicable rules, Applicant has made it difficult or impossible for Opposer to present relevant, material evidence to the Board.

WHEREFORE, Opposer respectfully requests the Board

1. Impose appropriate sanctions for Applicant's willful failure to participate in the discovery process and willful failure to comply with the previous Order of the Board; and
2. For such other and further relief as the Board deems appropriate.

Respectfully submitted this 11th day of November, 2008.

WYRICK ROBBINS YATES & PONTON LLP

/s/ Joseph H. Nanney, Jr.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 11, 2008 a true and correct copy of the foregoing Opposer's Motion for Sanctions was electronically filed with the TTAB via the ESTTA Filing System with the same served upon counsel of record for Applicant by electronic mail and U.S. Mail, postage prepaid, addressed as follows:

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